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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,387	08/20/2003	Judith A. Reichenbach	P-4987P1P1P1	6144

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EXAMINER
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HANDY, DWAYNE K

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/644,387

Applicant(s)

REICHENBACH ET AL

Examiner

Dwayne K. Handy

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1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/18/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 1, 15 and 19 recite a "plurality of container assemblies". As best the Examiner can determine from the Figures and Specification, however, it appears that Applicant has disclosed a device that is a ***single container assembly comprised of first and second containers – not a plurality of container assemblies*** as recited in the claims. The Examiner refers to the Figures which appear to show a single assembly comprised of two containers and not a plurality of assemblies. The Examiner also notes that the only recitation of a plurality of containers in the Specification appears in paragraph 0012, which refers to a plurality of nested containers that comprise the assembly. Therefore, it is unclear to the Examiner as to what Applicant is claiming in the claims that recite a plurality of container assemblies. The Examiner considers a device such as those Kedar or Boulton (cited below) as examples of devices having a plurality of container assemblies since these devices show multiple assemblies – each having nested containers.

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4. Claim 3 recites "the inner container of the first container assembly" and "the inner container of the second container assembly". This is unclear. As noted above, it appears that there is only one assembly – comprised of the first and second containers. Claim 5 recites "the second container assembly". Claim 7 recites the "inner container of the first container assembly". The Examiner submits that given previous statements in this paragraph, any recitation of first and/or second assemblies is unclear since there appears to be only one container assembly. The Examiner notes this in order to keep from noting every recitation of the first and second (or plurality of) container assemblies in the claims. Claims 8, 14, and 19 recite a first and second closures. This is unclear. Applicant has only disclosed and shown one closure element. Claim 17 recites that the first and second containers have substantially identical thickness. Applicant has previously claimed that these containers have a different thickness in claim 15, however. Claim 24 recites a method for collecting a sample liquid. Applicant has not set forth any steps in the Specification though. Therefore, it is unclear what steps are required to perform the method.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent

granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-8, 10-14, 15-17 and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Konrad (5,871,700). Konrad teaches a holding device with a cylindrical container and blood sampling tube. The device is best shown in Figures 1 and 5-9. It includes a cylindrical container (2) surrounded by an outer housing (4) having substantially the same dimensions. The device also includes a stopper (15) that closes both the container (2) and housing (4). Figures 1, 7 and 9 show a tapered container (2) and portions of the container (2) bottom that touch the closed bottom of the housing (4). Figures 5 and 6 also show areas between the container (2) and housing (4). Konrad recites using different materials for the container (2) and housing (4).

7. Claims 1-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Iskra (6,651,835). Iskra teaches a collection container assembly. The assembly is best shown in Figures 1, 2, 5 and 6. The assembly includes outer tube (12) surrounding inner tube (14) and stopper (16) for closing both tubes. The inner tube includes a top section (34) having a roughened surface that allows venting of the outer container above a tapered section (40). Iskra recites two different materials for the containers in the claims.

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8. Claims 1-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Iskra (6,749,078). Iskra teaches a collection container assembly. The assembly is best shown in Figures 1, 3, 5 and 6. The assembly includes outer tube (12) surrounding inner tube (14) and stopper (16) for closing both tubes. The inner tube includes a top tapered section (50) as well as a roughened surface (32) on the outside of the tube. Iskra recites two different materials for the containers in the claims.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hutton (6,612,997) teaches a collection container assembly. Boulton et al. (6,027,694), Kedar et al. (6,083,761) and Bodner et al. (6,805,842) show devices having a plurality of nested container assemblies.


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwayne K. Handy whose telephone number is (571)-272-1259. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DKH  
September 30, 2006

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700